

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MONSANTO COMPANY and
MONSANTO TECHNOLOGY LLC,

Plaintiffs,

v.

E.I. DU PONT DE NEMOURS AND CO. and
PIONEER HI-BRED INTERNATIONAL, INC.,

Defendants.

Case No. 09-cv-0686 (ERW)

**DEFENDANTS' REPLY MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT OF
INVALIDITY FOR IMPROPERLY BROADENED REISSUE CLAIMS**

Appendix B

APPENDIX B**Claims****‘435 Patent Claims**

4. A recombinant, double-stranded DNA molecule comprising in sequence:

- a promoter which functions in plant cells to cause the production of an RNA sequence;
- a structural DNA sequence that causes the production of an RNA sequence which encodes a EPSPS enzyme having [four specific] sequence domains[; and]
- a 3' non-translated region which functions in plant cells to cause the addition of a stretch of polyadenyl nucleotides to the 3' end of the RNA sequence;

where the promoter is heterologous with respect to the structural DNA sequence and adapted to cause sufficient expression of the encoded EPSPS enzyme to enhance the glyphosate tolerance of a plant cell transformed with the DNA molecule.

‘247 Patent Claims

115. A glyphosate-tolerant plant cell comprising a DNA sequence encoding an EPSPS enzyme having the sequence of SEQ ID NO: 70.

116. A glyphosate-tolerant plant comprising a DNA sequence encoding an EPSPS enzyme having the sequence of SEQ ID NO: 70.

117. The plant of claim 116, wherein the plant is corn, wheat, rice, barley, soybean, cotton, sugarbeet, oilseed rape, canola, flax, sunflower, potato, tobacco, tomato, alfalfa, poplar, pine, eucalyptus, apple, lettuce, peas, lentils, grape or turf grasses.

118. The plant of claim 117, wherein the plant is corn.

119. The plant of claim 117, wherein the plant is soybean.

120. The plant of claim 117, wherein the plant is canola.

121. The plant of claim 117, wherein the plant is cotton.

122. A seed of the plant of claim 116, wherein the seed comprises the DNA sequence encoding an EPSPS enzyme having the sequence of SEQ ID NO: 70.

123. The seed of claim 122, wherein the seed is corn, wheat, rice, barley, soybean, cotton, sugarbeet, oilseed rape, canola, flax, sunflower, potato, tobacco, tomato, alfalfa, poplar, pine, eucalyptus, apple, lettuce, peas, lentils, grape or turf grass seed.

124. The seed of claim 123, wherein the seed is corn seed.

125. The seed of claim 123, wherein the seed is soybean seed.

126. The seed of claim 123, wherein the seed is canola seed.

127. The seed of claim 123, wherein the seed is cotton seed.